

certainly many of the material features of a contract between the government and the corporation; there is manifestly a *quid pro quo*. But this contract, if it be so, is, and of necessity must be, like all others to which a government or State is a party, one of imperfect obligation as regards the State; *Vattel Law Nation. Prelim. s. 17*; and, as such, subject to be dealt with by the government of the State as the public good may require, on making a just compensation for any private property which may be taken for a public use. No bodies politic of this description were ever created under the Provincial government; but since our independence, a great number of them have been called into existence; such as canal companies, November, 1783, ch. 23, bridge companies; 1795, ch. 62; turnpike road companies, &c.; 1797, ch. 65. (f)

The right and capacity to sue and be sued, is an incident to bodies politic of all descriptions; 1 *Blac. Com.* 475; even to those which have been incorporated by and are located in another State or in a foreign country. 1 *Blac. Com.* 385; 4 *Com. Dig.* 487; *Henriques v. Dutch West Indian Company*, 2 *Ld. Raym.* 1532; *The National Bank of St. Charles v. De Bernales*, 11 *Com. Law Rep.* 475. It is held to be incumbent upon every body politic, not being incorporated by a public law of which the Court *is bound to take notice, which comes into a Court of justice as a plaintiff, if required, even upon the general issue only being pleaded, to shew the authority under which it has assumed to act as a corporation. 4 *Com. Dig.* 487; *McMechen v. The Mayor of Baltimore*, 2 *H. & J.* 41; *Agnew v. The Bank of Gettysburg*, 2 *H. & G.* 479. When called on as a defendant its corporate capacity is thus admitted, and it appears by attorney, and responds under its

(f) In regard to the irrevocable nature of an Act of incorporation, it may be well not only to bear in mind the distinctions, as explained above in the text, according to which it is quite obvious, that at least two out of the three kinds of corporations, there described, may be modified or repealed at the pleasure of the Legislature, without the slightest interference with the rights of private property of any kind. But that there must also be a variety of cases in which corporations of the third class, such as turnpike roads, may have their stock, even considering it as private property, indefinitely depreciated, or, in effect, totally annihilated, without, in the opinion of any one, giving rise to a claim for compensation, as in cases where mere private property is taken, by virtue of the government's power of eminent domain, for public use. Without going into an argument, it will be sufficient to state a case which has occurred. By the Act of 1812, ch. 78, the Legislature incorporated a company for making a turnpike road from Baltimore to Washington; under which the road was made, and the stock yielded a considerable dividend annually. After which the Legislature, by the Act of 1830, ch. 158, authorized the construction of a railroad between the same cities, and nearly parallel with the turnpike road, which was accordingly put in operation. In consequence of which the annual dividends on the stock of the turnpike road have been very materially diminished.—*Currie v. The Mutual Assurance Society*, 4 *Hen. & Mun.* 315.